

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

WP(C).No. 26787 of 2007(L)

PETITIONER:

JOSE MATHEW, AGED 56 YEARS,
S/O. MATHEW, EDACKATTUKUDIYIL HOUSE, KOTHAMANGALAM,
PROPRIETOR, ANN CHINIEMA & JAWAHAR THEATRE,
KOTHAMANGALAM.

BY ADV. SRI. PEEYUS A. KOTTAM

RESPONDENTS:

1. KOTHAMANGALAM MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, KOTHAMANGALAM.
2. TRAFFIC ADVISORY COMMITTEE,
KOTHAMANGALAM MUNICIPALITY, KOTHAMANGALAM,
REPRESENTED BY ITS CHAIRMAN.
3. JOINT REGIONAL TRANSPORT OFFICER,
KOTHAMANGALAM.
4. REVENUE DIVISIONAL OFFICER,
KOTHAMANGALAM.
5. CIRCLE INSPECTOR OF POLICE,
MUVATTUPUZHA.
6. ASSISTANT EXECUTIVE ENGINEER,
PWD (ROADS), MUVATTUPUZHA.
7. SANTHOSH,
PALACHUVATTIL, ELAMBRA, KOTHAMANGALAM.
(OWNER/DRIVER OF GOODS AUTORIKSHAW BEARING
REG.NO.KL/44-1746).

R1 & R2 BY ADV. SRI.V.M.KURIAN, SC.

R3 TO R6 BY ADV.SRI.K.J.MOHAMMED ANZAR, SR. GOVT. PLEADER.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 26787 OF 2007

Dated this the 8th day of October, 2007

JUDGMENT

The petitioner, the proprietor of ANN Cinema and Jawahar Theatre, Kothamangalam is aggrieved by what he describes as the unauthorized parking of goods vehicles in front of the gate of his cinema theatre in such a manner as to block free ingress and egress of vehicles from the public road to the theatre. Ext.P1 photograph is relied on by the petitioner to show that vehicles are being parked in front of the petitioner's theatre and the gate in such a way as to block free ingress and egress from the highway to the petitioner's property which is situated abutting the highway. Parking of the goods vehicles in the present manner prevents the entry of vehicles coming to the theatre and to the petitioner's premises. As a result of this, petitioner and his customers are constrained to park their vehicles on the side of the public road. Petitioner claims that he has a fundamental right to carry on his trade and avocation without obstruction to his private right of access to the national highway, by virtue of Article 19(1) (g) of the Constitution. The 1st respondent is the Kothamangalam Municipality and the 2nd respondent is the Traffic Advisory Committee of the Kothamangalam Municipality. The 3rd respondent is the Joint RTO,

Kothamangalam. The 4th respondent is the Revenue Divisional Officer, Kothamangalam. The 5th respondent is the Circle Inspector of Police, Kothamangalam. The 6th respondent is the Assistant Executive Engineer, PWD(Roads), Muvattupuzha, having jurisdiction over the area. The 7th respondent is a representative of owners/drivers of the vehicles which are often parked in front of the petitioner's premises.

2. Petitioner submits that being aggrieved by the parking of the vehicles in the present manner, he submitted a representation to the 1st respondent requesting to take necessary action for prohibiting unauthorized parking of autorikshaws in front of his gate. The 1st respondent communicated the petitioner's complaint to the 2nd respondent. Ext.P2 is the 1st respondent's letter in this regard to the petitioner. On receiving Ext.P2, the petitioner sent Ext.P3 representation to the 2nd respondent. Apart from that, Ext.P4 was sent to the 3rd respondent, Joint RTO. Ext.P5 is copy of the reminder sent by the petitioner to the 1st respondent. Petitioner complains that in spite of all the above, no appropriate action has been taken and the grievance remains un-redressed. Hence the Writ Petition with the following prayers:

- i. issue a writ of mandamus or any other appropriate writ, order or direction and thereby command the respondents 1 to 5 to take

appropriate measures to prevent autorikshaws from being parked in front of the petitioner's Theatres named "ANN Cinema" & "Jawahar Theatre" at Kothamangalam and also from causing obstruction to the right of the petitioner for the free ingress and egress to the National Highway;

ii. Issue a writ of mandamus or any other appropriate writ, order or direction and thereby direct the 1st and 2nd respondents to take immediate steps to prevent the illegal obstruction being caused to the petitioner due to the illegal parking of autorikshaws in front of the petitioner's theatres after taking a decision by the authority concerned as referred in Ext.P2 letter and also on Ext.P3 to P5 representations submitted by the petitioner, within a time frame fixed by this Hon'ble Court;

3. Notice was ordered and service was completed on all the respondents. Sri.V.M.Kurian, Standing Counsel entered appearance for respondents 1 & 2 and the Government Pleader for respondents 3 to 6. Though 7th respondent was served, he did not enter appearance for resisting the prayers in the Writ petition.

4. I have heard the submissions of Sri.Peeyus A. Kottam, learned counsel for the petitioner, Sri.V.M.Kurian, Standing Counsel and the learned Government Pleader, Sri.K.J.Mohammed Anzar. My attention

was drawn by the counsel for the petitioner to the judgment of this court in **M.V. Joseph v. District Magistrate & Anr.** [1996(2) KLJ 213] wherein this Court has allowed a Writ Petition and ordered that an owner of land adjoining a highway has a right to have access to the highway at all points where his land adjoins the highway. It was argued on the strength of this judgment that allowing the taxi operators to park the vehicles on the highway obstructing the private rights of land owners abutting the Highway, would be an invasion of the right of the land owner to have access to the highway and that public right of passage is subject to the private rights of land owner's to access the highway.

Having regard to the submissions addressed at the Bar, the averments in the Writ Petition and the documents placed on record, I am of the view that there is some genuineness in the grievance voiced by the petitioner and that it is the duty of all the respondents to ensure that the above grievance is redressed and the petitioner and his customers are permitted to access the main road freely without being obstructed by the parking of vehicles. Accordingly, this Writ Petition will stand disposed of issuing the following directions:

The 4th respondent, Revenue Divisional Officer shall convene a meeting along with the Traffic Advisory Committee, Kothamangalam for considering the grievance raised by the petitioner. An appropriate

decision bringing about a reasonable solution for the petitioner's complaint shall be taken at the earliest and at any rate within three months of receiving copy of this judgment. The Traffic Advisory Committee shall hear all the effected parties including the 7th respondent. In the mean while, the 5th respondent is directed to take appropriate action in the light of the principles laid down in the judgment of this court in **M.V. Joseph**'s case(supra) and ensure that ingress and egress to the petitioner's theatre premises is not obstructed by parking of any vehicle.

PIUS C. KURIAKOSE, JUDGE

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